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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re T.S. et al., Persons Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

J.S.,

Defendant and Appellant.

G056868

(Super. Ct. No. 18DP0598)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Dennis J. Keough, Judge. Affirmed.

Donna P. Chirco, under appointment by the Court of Appeal, for Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Deborah Morse, Deputy County Counsel, for Plaintiff and Respondent.

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Following the juvenile court's order sustaining dependency jurisdiction over D.S. (age 3 months) and her maternal half-sister, T.S. (age 5), J.S. (father) challenges the sufficiency of the evidence to support the court's dispositional order maintaining the girls outside his care. Father failed to recognize a pattern of domestic violence or the challenges presented by his partner's mental illness and addictions. J.A.S. (mother) did not request that the children be returned to her custody, recognizing she needed to work on her sobriety and parenting skills. In contrast, the court expressed concern regarding a "disconnect" in father's "testimony and his evaluation of Mother . . . and her parenting abilities," including father's conclusion it was "safe" to return the children to her and she posed no danger requiring vigilance. The court observed that father seemed to seek custody of T.S., who was not his daughter, as a "hook" for his relationship with mother, though he would not visit either girl in their placement and stated he would "walk away" from D.S. Substantial evidence supports the juvenile court's ruling, which we therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2018, police officers responded to a domestic disturbance at a Tustin motel, where they found mother had scratched and clawed father. T.S. reported father and mother had consumed "a lot of wine" and that father struck mother, provoking her to strike back. Father stated he only "pushed" mother in self-defense. Father reported that the children had been present throughout the incident, which began in the motel room the evening before with mother threatening to kill him, and continued the next day when she assaulted him and he called 911. The responding officers observed that mother smelled of alcohol and exhibited erratic and agitated behavior. Based on the scratches and marks on father's body, the officers arrested mother and detained the children.

Father later claimed he did not actually fear mother. Mother also claimed T.S. must have been mistaken in stating father hit her (i.e., mother), suggesting instead that T.S. confused father with T.S.'s biological father, Rodney, with whom mother had many domestic violence altercations before she recently left Oklahoma. Father had only resided with T.S. for about three weeks at the time of the motel incident.

The responding officers noted mother's history of public intoxication and trespassing arrests in California, and father's for drug-related arrests and convictions. Mother's out-of-state convictions included domestic assault and battery with a minor present, and felony drug possession. Father admitted an arrest for domestic violence against mother in 2017, but stated he believed the charges had been dismissed. Father reported he previously had been addicted to cocaine but that he last used in 2000; mother admitted a history of alcohol and substance abuse, including methamphetamine.

Mother also disclosed mental health issues, which were confirmed by her mother who explained the symptoms had begun about two years earlier. Mother was prescribed medication for her conditions, which she identified as schizoaffective and bipolar disorders. She recognized medication compliance and counseling were necessary to reunify with D.S. and T.S. after the juvenile court detained them in protective custody. According to father, mother was not taking her medication when the motel incident occurred, but he denied her compromised mental health impaired her ability to safely care for the children. Father attributed the ongoing arguments he and mother engaged in to their age disparity; in his late thirties, he was 12 years older than mother.

Father was aware of mother's substance abuse history, but he denied knowledge of her present drug or alcohol use. He testified he had purchased a bottle of cognac and left it in the motel fridge before mother assaulted him. Father and mother had been dating about two years, and she told him he was D.S.'s father, which a paternity test later confirmed. She advised the officers who responded to the motel that no father was listed on D.S.'s birth certificate.

Following mother's arrest, she and father moved to Riverside, while the children remained at an Orange County foster care facility. Mother denied an allegation she shook D.S. during a July 2018 visit.

The social worker uncovered 11 child abuse referrals in Oklahoma between 2007 and 2014 for mother and T.S.'s father, Rodney, including one in which both parents drove while "extremely intoxicated" and neither had cleaned blood from T.S.'s face, which mother attributed to a fall. Additional referrals between 2014 and 2018 included concerns regarding mother's mental health and substance abuse. The couple agreed to voluntary services through the child protection agency to address "[a]lcoholism and domestic violence." Although that case closed in May 2016, a referral the next month for T.S. based on exposure to domestic violence was substantiated.

Mother claimed Rodney obtained a "false protective order" against her. When it was lifted, she left Oklahoma for California about a week before the motel incident with father occurred. Rodney remained in contact with mother through video calls and he told the social worker that mother appeared to have suffered a black eye while residing with father after T.S. and D.S. were detained in Orange County. Rodney minimized his own history of domestic violence with mother as a "misunderstanding."

The trial court sustained jurisdiction over D.S. and T.S. in July 2018, but deferred the disposition hearing based on the social service agency's (SSA's) recommendation that the case be transferred to Riverside County, which ultimately did not occur. Mother entered a residential alcohol rehabilitation program.

After two months in the foster care facility, the children moved to a resource home in August 2018. The caregivers reported T.S.'s phone contact with Rodney was appropriate, but mother's phone calls distressed her, and father had not contacted them to arrange visitation or to inquire about the children's well-being. The social worker visited the home father shared with four other individuals, where he hoped

to have the children placed with him. The worker found the home clean, properly furnished, and without visible safety hazards.

Father told the social worker that he “had to quit his job” and would assume all caretaking duties for the children; he planned to sue the “County and the police” for wrongfully detaining the children, and he intended to move to Michigan within 30 days to obtain low income housing.

Father explained he had not visited his daughter or T.S. since their removal because it “emotionally damaged” him. Specifically, he said he “can’t stand” the thought of seeing D.S. in a foster home “with other people breathing in her face.” Therefore, if she were not returned to his care, he would “walk away” from D.S. When the social worker stressed the importance of forming a bond with her as an infant, he answered that he had to do “what’s best for him.” For her part, mother was no longer enrolled in her residential treatment center and, while she claimed to have located a sober living home, she would not provide an address. Based on phone conversations the social worker overheard, the worker concluded mother resided with father.

Meanwhile, T.S.’s challenging behaviors required the resource couple’s full attention, so in September 2018, they reluctantly gave SSA notice that they could not also care for D.S. Consequently, SSA began looking for an alternate placement for her.

The trial court held the disposition hearing that month. The social worker identified “a pattern of abuse or . . . discord” between mother and her partners, which father had done nothing to address, including his reportedly active role in the motel incident. Regardless of who instigated acts of domestic violence, father appeared not to grasp its gravity, seeming “more concerned with his emotional anguish,” including a potential need to “walk away” without any “insight as to what effect his absence could cause to his child.”

Father denied stating he would abandon D.S., but acknowledged his lack of visits stemmed from feeling “punished and tortured” by the children’s removal, causing

him to “suffer from mental anguish.” He did not believe mother posed any danger to the children and that it was “safe” to return them to her custody, but he testified he would allow them only “court approved” contact with her if they were placed in his care.

The juvenile court did not find father credible. The court observed it “simply d[id] not believe that father would be capable of establishing appropriate boundaries should the child or children be released to his care,” in particular “to be sufficiently protective of the children regarding mother . . . given the primacy of what appears to be his self-referential concerns and concerns for mother.” The court expressly cautioned it was “not looking for perfection.” Instead, the court stated, “It’s the ability of the father . . . to protect his own child and put her needs ahead of his own primary needs [that] is at issue.” The court “note[d] that [D.S.’s] needs to have her father present to begin, to continue the important bonding process . . . seems to have been lost in the shuffle.”

The juvenile court in its dispositional order directed that “custody be taken from each child’s respective parents,” to be “vested with [SSA] for suitable placement.” Father now appeals.

DISCUSSION

Father does not challenge the trial court’s order assuming jurisdiction over D.S., only its dispositional order declining to return her to his care. Under Welfare and Institutions Code section 361, subdivision (c)(1), a child who resided with his or her parents before falling under dependency jurisdiction must remain in, or be returned to, the parents’ custody, or to one of them, unless the juvenile court finds by clear and convincing evidence “a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from [parental] custody.” (§ 361, subd. (c)(1).)

“‘[O]n appeal . . . “the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent’s evidence, however slight, and disregarding the appellant’s evidence, however strong.’”” (*In re E.B.* (2010) 184 Cal.App.4th 568, 578.)

“A removal order is proper if it is based on proof of (1) parental inability to provide proper care for the minor and (2) potential detriment to the minor if he or she remains with the parent.” (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1163.) “The jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. [Citation.] The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.] In this regard, the court may consider the parent’s past conduct as well as present circumstances.” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.)

Father argues the juvenile court erred by “focus[ing] . . . on [his] decisions regarding visitation and some ongoing contact between the parents,” rather than whether D.S. “would be at substantial risk in his care.” The court did not err. The court identified the dispositive issue, namely, father’s “ability . . . to protect his own child.” The court recognized that perfection is not required; the standard is “passing grades . . . , not straight A’s.” (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 790.)

Father emphasizes that *he* called 911 at the outset of the proceedings, demonstrating he could “stand[] up to mother” to “protect himself and D.S.” He also notes the juvenile court in an interim order authorized SSA to return D.S. to his care, once mother was out of the home. After hearing father’s testimony that he believed it was “safe” to return the children to mother’s care, when she herself did not share that opinion, the juvenile court reasonably concluded father failed to appreciate the risks the children faced from mother’s unresolved substance abuse and mental health issues, and/or from domestic violence. An inability to perceive risk is itself a risk factor. “One

cannot correct a problem one fails to acknowledge.” (*In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197.)

Additionally, father’s vacillation on whether he really feared mother in making the 911 call, together with the absence of any evidence he was concerned about the children rather than himself in calling for aid, reasonably could give the court pause about his ability to protect D.S. Father stresses in his testimony that he would abide by court orders concerning mother, but the court, as sole judge of witness credibility, did not believe him—and reasonably so when he showed no interest in visiting the children, only mother.

Father suggests there was no evidence that domestic violence remained a risk, but mother’s pervasive history and father’s total failure to address the issue could reasonably suggest to the court that father did not appreciate a real danger. Domestic violence is a scourge. Exposure to domestic violence is a form of “secondary abuse” as “children are affected by what goes on around them as well as what is directly done to them.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 195, overruled on other grounds in *In re R.T.* (2017) 3 Cal.5th 622, 628.) Studies show that “children suffer enormously from simply witnessing the violence between their parents.” (*In re Sylvia R.* (1997) 55 Cal.App.4th 559, 562.) Domestic violence presents a substantial risk of harm to children, particularly at a tender age, as here, when they are unable to protect themselves. (*Id.* at pp. 561-562; *In re R.C.* (2012) 210 Cal.App.4th 930, 941-942.)

Father downplays the importance of his bond with D.S. as an infant, suggesting the crucial question was her risk of harm. He testified he would not walk away from D.S., but instead visit her every day if she were not returned to his care. As discussed, the record demonstrates a substantial risk of harm. Time will tell as the dependency proceedings continue whether father will visit D.S. and make her protection his priority.

DISPOSITION

The juvenile court's dispositional order is affirmed.

GOETHALS, J.

WE CONCUR:

O'LEARY, P. J.

THOMPSON, J.